

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Madan Mohan & Another Vs. State of Raj.
(D.B. Criminal Appeal No.1025/2002)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C.
against the judgment dated 11-7-2002 in Sessions Case
No.177/2001 passed by Sh. Patanjali Sharma,
Additional Sessions Judge (Fast Track) No.3,
Bharatpur.

Date of Judgment: July 04, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

HON'BLE MR. JUSTICE R.S.CHAUHAN

Mr. D.G. Chaturvedi, for the appellants.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Madan Mohan and Laxman Prasad, appellants herein, along with Raja Ram (died during trial) were indicted before learned Additional Sessions Judge (Fast Track) No.3 Bharatpur, who vide judgment dated July 11, 2002 convicted and sentenced the appellants as under:-

U/s.302/34 IPC:

Both to suffer imprisonment for life and fine of Rs.500/-, in default to further suffer six months simple imprisonment.

U/s.325/34 IPC:

Both to suffer simple imprisonment for two years.

U/s.324/34 IPC:

Both to suffer simple imprisonment for two years.

U/s.323/34 IPC:

Both to suffer simple imprisonment for six months.

All sentences were directed to run concurrently.

2. It is the prosecution case that on April 10, 2001 informant Ram Khilari submitted a written report (Ex.P-15) at Police Station Nadbai to the effect that on the said day around 5-6 AM while the informant along with his wife Narvada (since deceased) and son Umesh was reaping the wheat crop at his field Raja Ram, Laxman, Santra, Madan Mohan, Bhagwani, Sushma and Manju armed with Lathis, Pharsa and Ballam came over there hurling abuses and started beating the informant. When Narvada and Umesh made attempt to intervene, they were also severely beaten up with cutting weapons. Both of them were removed to the hospital in an injured condition. On that report case under sections 147, 323, 341, 447 and 504 IPC was registered and investigation commenced. Narvada died in the course of investigation and section 302 IPC came to be added. On completion of investigation charge sheet was filed against the appellants and one Raja Ram. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.3, Bharatpur. Charges under sections 447, 302/34, 307/34, 325/34, 323/34 and 341 IPC were framed against the accused, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 21 witnesses. Raja Ram died during the trial and proceedings were dropped against him on July 4, 2002. In the explanation under section 313 Cr.P.C., the appellants claimed innocence. Two witnesses in defence were examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. We have heard learned counsel for the appellants and learned Public Prosecutor and with their assistance scanned the entire evidence on record.

4. Death of Narvada was homicidal in nature. As per postmortem

report (Ex.P-27) following ante mortem injuries were found on the dead body:-

1. Lacerated wound size 4cm x 2cm x bone deep on mid region of forehead.
2. Lacerated wound 4.5cm x 1cm x bone deep on the mid occipital region of scalp
3. Incised wound 3cm x $\frac{1}{2}$ cm x bone deep left parieto temporal region of scalp
4. Lacerated wound 3.5cm x $\frac{1}{2}$ cm x bone deep on the right parietal region of scalp
5. Lacerated wound 4 x $\frac{3}{4}$ cm x bone deep on the right occipital parietal region of scalp.
6. Lacerated wound 3cm x 2cm x bone deep diffuse swelling of left forearm on the antero lateral region both bones of lower $\frac{1}{3}$ region are fractured.
7. Lacerated wound 1.3cm x $\frac{3}{4}$ cm x muscle deep with diffuse swelling at lower $\frac{1}{2}$ organ right forearm on back region. Both bones are fractured at same region.
8. Incised wound 4cm x $\frac{1}{4}$ x muscle deep lateral aspect of upper $\frac{1}{2}$ of right forearm
9. Lacerated wound 1cm x $\frac{1}{2}$ cm x muscle deep on lateral aspect of right elbow
10. Abrasion (a) 2cm x 1cm (b) 1cm x $\frac{3}{4}$ cm on back of right hand.
11. Abrasion 6cm x 2cm on the right shoulder region.
12. Lacerated wound 3cm x $\frac{1}{2}$ cm x bone deep on medial aspect of left knee.
13. Abrasion 20cm x 3cm on front of left leg.
14. Incised wound 3.5 x $\frac{3}{4}$ cm x bone deep on front of left foot
15. Abrasion with bruise redis? 14Cm x 5cm on anterior lateral aspect of right leg & knee.
16. Lacerated wound 3cm x $\frac{1}{2}$ cm x skin deep on the front of lower $\frac{1}{2}$ of right leg.
17. Incised wound 4cm x $\frac{1}{2}$ cm x bone deep on medial aspect of lower $\frac{1}{2}$ of right leg.
18. Lacerated wound 1.5 cm x $\frac{3}{4}$ cm x muscle deep on lateral aspect of lower $\frac{1}{2}$ of right leg.
19. Incised wound 2cm x $\frac{1}{2}$ cm x skin deep on front of chin.

The cause of death in the opinion of Dr. Pooran singh Azad (Pw.19), who was member of the Board who performed autopsy on the dead body, was coma leading injuries No.1to5 to vital organ brain.

5. The injuries sustained by informant Ram Khilari (Pw.14) and Umesh (Pw.4) were examined vide injury reports (Ex.P-25) and (Ex.P-23).

6. The prosecution case is founded on the testimony of informant Ram Khilari (Pw.14) and Umesh (Pw.4), who were examined as eye witnesses of the occurrence. In his deposition Ram Khilari stated that Raja Ram, Laxman, Santosh, Madan Mohan, Bhagwani, Sushma and Manju came armed with Pharsa, Lathi, Daranti and iron rod. Raja Ram inflicted Lathi-blow on his right hand, feet and left cheek. Santosh caused injury on his head with blunt side of Pharsa. When Narvada and Umesh intervened they were also given beating. In his cross examination he stated thus:-

"यह बात सही है कि झगडा खेत में गेहूं की फसल को काटने को लेकर हुआ था ... राजा राम मेरा सगा भाई है ... यह सही है कि जमाबन्दी में दोनों का नाम है ..."

7. Umesh (Pw.4) supported the testimony of Ram Khilari but in the cross examination he admitted that the field was in their joint possession.

यह सही है कि वह खेत जिसमें गेहूं काटकर पूरा बांध रहे थे वह कागजात में शामिल होती है।

8. A look at the testimony of Gordhan Singh IO (Pw.20) demonstrates that he did not care to investigate from Patwari as to who had sown the wheat crop on the land in question. In his cross examination he admitted that when informant Ram Khilari along with his wife Narvada and

son had gone to the field to reap the crop, accused party was already present in the field. He further admitted that Raja Ram lodged cross case bearing No.201/2001 under sections 323, 341, 447 and 379 IPC against the complainant party. According to Gordhan Singh IO accused party had also sustained injuries during the incident.

9. It also appears that appellant Laxman examined himself as Dw.2. In his deposition Laxman stated that his father Raja Ram had filed a complaint dated March 27, 2001 (Ex.D-5) in the court of ACM Nadbai, who on March 31, 2001 directed Ram Khilari, Umesh and Narvada under section 107/116 CrPC to furnish bail bonds for maintaining peace. Cross FIR bearing No.201/2001 registered against the complainant party also got exhibited as Ex.D-8.

10. Learned trial court after having considered the material on record observed in the impugned judgment that the entry of the accused party in the field in question was bonafide since they had joint possession over the field and charge under section 447 IPC was not made out against the appellants. The observations of learned trial court reads as under:-

"वादग्रस्त खेत 718 दोनों पक्षों की शामिल होती है अभियोजन की साक्ष्य से प्रमाणित है। अगर अभियुक्तगण उससे सदभावनापूर्ण अधिकार के उपयोग करने हेतु उस खेत में प्रविष्ट हुए हो तो यह नहीं कहा जा सकता कि उनका उद्देश्य आपराधिक अतिक्रमण करने का हो। अभियुक्तगण पर आरोपित अपराध धारा 447 भा0दं0सं0 अभियोजन की साक्ष्य से प्रमाणित होना नहीं पाया जाता है। अतः अभियुक्तगण को उक्त अपराध से दोषमुक्त किये जाने योग्य पाया जाता है।"

11. Fact situation emerges from the record is as under:-

(i) The accused party and complainant party jointly owned and possessed the field bearing khasra No.718.

- (ii) The complainant party was restrained by the ACM Nadbai on March 31, 2001 just before 10 days of the incident from disturbing the peace in regard to the said land. The complainant party was asked to furnish bonds for keeping peace.
- (iii) The complainant party was aggressor since the accused party was already there in the field at the time of incident.
- (iv) During the incident members of the accused party viz. Raja Ram and Laxman also received injuries.

12. The appellants in the instant case have been convicted with the aid of section 34 IPC. It is therefore necessary to consider the ingredients of Section 34 IPC. Common intention within the meaning of Section 34 IPC implies a pre-arranged plan and to convict the accused of an offence applying the section, it should be proved that the criminal act was done in concert pursuant to the pre-arranged plan and the inference of common intent should never be reached unless it is necessary inference deducible from the circumstances of the case.

13. In *Jai Bhagwan Vs. State of Haryana* (1999)3 SCC 102, wherein their Lordships of Supreme Court indicated that to apply section 34 IPC apart from the fact there should be two or more accused, two factors must be established, (i) common intention and (ii) participation of the accused in the commission of an offence. If a common intention is proved but no overt act is attributed to the individual accused, Section 34 will be attracted as essentially it involves vicarious liability but if participation of the accused in the crime is proved and a common intention is absent, Section 34 cannot be invoked. In every case, it is not possible to have direct evidence of a common intention. It has to be inferred from the facts and

circumstances of each case.

14. Having closely scrutinised the evidence adduced at the trial it is difficult for us to draw the inference of common intention of the appellants to commit the crime. They had every right to protect the property which was jointly owned and possessed by them. On every inch of the property they had legal right. It is inexplicable that after acquittal of appellants of the charge under section 447 IPC, why they were found guilty with the aid of section 34 IPC. Once their entry over the land was found bonafide, they were within their right to defend their property.

15. Section 97 IPC recognises the right of a person not only to defend his own or another's body but to defend his own or another's property even against an attempt to inflict any offensive act as against the property. It is now well settled that if a man's property is in imminent danger of being impaired or attacked he has the right to resort to such measures as would be reasonably necessary to thwart the attempt, to protect his property. Their Lordships of the Supreme Court in Mahabir Chaudhary Vs. State of Bihar (1996)5 SCC 107, indicated two measures of right of private defence, one is the first degree which shall not reach up to causing of death of the wrong doer, the other is the full measure which may go upto causing death. Both measures are however subjected to the restriction enumerated in Section 99. Section 104 IPC contains the bridle that right of private defence shall not cross the limit of first degree as against acts which would remain as theft, mischief or criminal trespass. But Section 103 recognises extension of the said right upto the full measure, even as against the aforesaid acts but only if such acts or their attempts are capable of inculcating reasonable

apprehension in the mind that death or grievous hurt would be the consequence if the right is not exercised in such full measure. The emerging position is that unless one has reasonable cause to fear that otherwise death or grievous hurt might ensure, the right of private defence cannot be used to kill the wrong doer. It was held that when the acts are amounted to mischief the accused had a right of private defence to thwart the same. In the course of exercise of such right of private defence, the accused who gunned-down the mischief-makers, has obviously acted far in excess of right of private defence. Nonetheless the first degree of right of private defence cannot be denied to the accused.

16. In the case on hand as already noticed the complainant party inspite of restraining order made attempt to reap the crop that was jointly owned by the accused party. The complainant party took law in its own hand and the act of complainant party amounted to mischief. Thus the accused party if caused injuries on the person of aggressors, it acted in the right of private defence of the property.

17. The question that arises at this juncture is whether appellants could be convicted with the aid of section 34 IPC. In Subramani Vs. State of T.N. (2002)7 SCC 210 the Apex Court propounded that if the accused acted in exercise of their right of private defence of property, it cannot be said that they committed a criminal act in furtherance of a common intention, because section 96 makes it abundantly clear that nothing is an offence which is done in the exercise of the right of private defence. They did not commit any criminal act or to do anything which may be described as unlawful. Their object was not to kill the deceased but to protect their property. It may be,

that in a given case it may be found on the basis of material on record that some of them may have exceeded their right of private defence and for that they may be individually held responsible. But it cannot be said that the murder was committed pursuant to a common intention to commit such crime. The intention of the accused was not to cause death of the deceased, but they had acted in exercise of their right of private defence. While acting in exercise of the right of private defence, the accused cannot be said to be motivated by a common intention to commit a criminal act. Common intention has relevance only to the offence and not to the right of private defence.

18. In the case on hand appellants first approached ACM Nadbai with a prayer to restrain the complainant party from committing breach of peace, in regard to land in question but the complainant party was determined to flout the order of ACM Court and in pursuance thereof the complainant party illegally started reaping the wheat crop ignoring the presence of the accused party. In such a situation it could not be held that intention of accused party was to cause death of the deceased but it had acted in exercise of its right of private defence.

19. As a result of above discussion, we allow the appeal and set aside the impugned judgment dated July 11, 2002 of learned Additional Sessions Judge (Fast Track) No.3, Bharatpur. We acquit the appellants Madan Mohan and Laxman Prasad of the charges under sections 302/34, 323/34, 324/34 and 325/34 IPC. The appellant Madan Mohan is on bail, he need not surrender and his bail bonds stand discharged. Appellant Laxman Prasad, who is in jail, shall be set at liberty forthwith, if he is not required to be detained in any other case.

(R.S.Chauhan),J.

(Shiv Kumar Sharma)J.

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